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FAX

From: Henry P. Wu

Department: Patent -- RY60-30

Telephone: 732-594-5312

Date: 11/30/07

To: Benjamin P. Blumenel, Art Unit 1648

Telephone: 571 272-4960

Fax: 571 273-8300

Total number of pages: 9

Subject: USSN 10/791,503 -- Case 20634YCA -- Filed 3/2/04
Applicant: Robert K. Evans et al., Title: Adenovirus Formulations
Re: 1. Transmittal of Terminal Disclaimer and Interview Summary Record
2. Terminal Disclaimer;
3. Statement 37 CFR 3.73(b);
4. Copy of General Corporate Resolution #5;
5. Copy of Assignment and Agreement -- SN 09/799,937

CERTIFICATE OF FACSIMILE TRANSMISSION

I HEREBY CERTIFY THAT THIS PAPER IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE ON THE DATE SHOWN BELOW.

Alina Roche

Name

Alina Roche

Signature

11.30.07

Date

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert K. Evans <i>et al.</i>	Conf. No.: 1892
Serial No.: 10/791,503	Art Unit: 1648
Filed: March 2, 2004	Examiner: Blumel, Benjamin P
For: ADENOVIRUS FORMULATIONS	Attorney Docket No.: 20634YCA

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Transmittal of Terminal Disclaimer and Interview Summary Record

Sir:

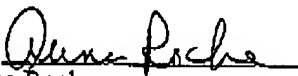
On November 29, 2007, Examiner Benjamin Blumel telephoned Applicants' representative, Henry Wu. During the call, Examiner Blumel indicated that the claims were in condition for allowance (but for the outstanding double patenting rejection) and requested a Terminal Disclaimer to overcome the provisional double patenting rejection over copending Application No. 11/071,095.

In response, Applicants submit herewith (1) a Terminal Disclaimer executed by Sheldon O. Heber, Managing Counsel on behalf of Merck & Co., Inc., including authorization for payment of the terminal disclaimer fee; (2) a Statement Under 37 CFR 3.73(b) executed by Sheldon O. Heber; (3) a copy of General Corporate Resolution #5 authorizing Sheldon O. Heber to execute documents relating to patent matters on behalf of Merck & Co., Inc., accompanied by a Certification; and (4) a copy of an Assignment and Agreement for Application No. 09/799,937

37 C.F.R. 1.8 Certificate of Mailing

I hereby certify that this correspondence is being being facsimile transmitted to the United States Postal Service Fax: 571-273-8300 on November 30, 2007.

MERCK & CO., INC.

By 
Alina Roche
November 30, 2007

Serial No.: 10/791,503
Case No.: 20634YCA


executed by the inventors, Robert K. Evans and David B. Volkin. The present application is a continuation of Application No. 09/799,937.

No other fees are believed to be due. However, the Commissioner is authorized to charge Deposit Account 13-2755 for any deficiencies and/or any other required fees.

Respectfully submitted,

Date: 11/30/2007

By:


Henry P. Wu
Reg. No. 44,412
Attorney for Applicants

Merck & Co., Inc.
P.O. Box 2000
Rahway, NJ 07065-0907
(732) 594-5312

NOV. 30. 2007 3:30PM MERCK&CO 732 594 4720

NOV 30 2007 NO. 994 P. 4
Substitute for "Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending 'Reference' Application" PTO/SB/25 (04-07)
 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

**TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number
20634YCA

In re Application of: Robert K. Evans et al.

Application No.: 10/791,503

Filed: March 2, 2004

For: Adenovirus Formulations

The owner*, Merck & Co. Inc., of the entire right, title and interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 11/071,095, filed on March 3, 2005, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such patent: granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☒ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.) the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☐ The undersigned is an attorney or agent of record. Reg. No. _____

Sheldon O. Heber

Signature

11-30-07

Date

Sheldon O. Heber

Typed or printed name

732 594-1958

Telephone Number

Managing Counsel

Title

- ☒ The Director is authorized to charge the terminal disclaimer fee under 37 CFR 1.20(d), or credit any overpayments, to Deposit Account No. 13-2755.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
 Form PTO/SB/95 may be used for making this statement. See MPEP § 324.

NOV. 30. 2007 3:31PM

MERCK&CO 732 594 4720

NOV 30 2007

NO. 994 P. 5

Substitute for 11/30/07 (04-07) "Statement Under 37 CFR 3.73(b)"
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Robert K. Evans et al.

Application No./Patent No.: 10/791,503

Filed/Issue Date: March 2, 2004

Entitled: Adenovirus Formulations

Merck & Co., Inc.

(Name of Assignee)

states that it is:

Corporation

(Type of Assignee, e.g.,
corporation, partnership, university,
government agency, etc.)

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
(The extent (by percentage) of its ownership interest is _____ %)

in the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____ Frame _____; Reel _____, Frame _____; or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

2. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

- ☒ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO.
See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature

Signature

Sheldon O. Heber

Printed or Typed Name

Date

Printed or Typed Name

Date

Managing Counsel

Title

Telephone Number

Title

732 594-1958

Telephone Number

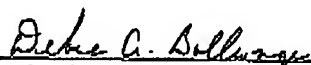
SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

PAGE 5/9 * RCVD AT 11/30/2007 3:31:14 PM [Eastern Standard Time] * SVR:USPTO-EFXXRF-2/16 * DNIS:2738300 * CSID:7325944720 * DURATION (mm-ss):02-28

MERCK & CO. INC.**CERTIFICATION**

I, Debra A. Bollwage, Senior Assistant Secretary of Merck & Co., Inc. (the "Company"), a corporation duly organized and existing under the laws of the State of New Jersey, do hereby certify that the attached, presently in full force and effect, is a true and correct copy of General Corporate Resolution #5, Patent Matters, as amended by Unanimous Written Consent of the Board of Directors of said Company on April 24, 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and affixed the seal of the Company this 27th day of April 2007.



Senior Assistant Secretary

(SEAL)

certifications-301

Page 1 of 1
Amended 4/24/07

General Corporate Resolution #5**PATENT MATTERS**

RESOLVED, that any of the following:

Richard T. Clark-Chairman, Chief Executive Officer and President
Kenneth C. Frazier-Executive Vice President and General Counsel
Joseph F. DiPrima-Vice President and Assistant General Counsel
Paul D. Matukaitis-Vice President and Assistant General Counsel
Edward W. Murray-Managing Counsel, IP Litigation
Gerard Devlin-Counsel, IP Litigation
Valerie J. Camara-Managing Counsel, Patents
Mark R. Daniel-Managing Counsel, Patents
Catherine D. Fitch-Managing Counsel, Patents
Sheldon O. Heber-Managing Counsel, Patents
William Krovatin-Managing Counsel, Patents
David A. Muthard-Managing Counsel, Patents
Anthony Rollins-Managing Counsel, European Patents
Edward M. Yoshida-Managing Counsel, Rosetta Inpharmatics
Charles M. Caruso-Counsel, International
Peter Haeberli-Assistant Counsel, Sirna Therapeutics, Inc.
John Oksinski-Executive Director, Banyu
Kenichi Osawa-Senior Director, Banyu Patent and Trademark Group
Donna L. Margiotta-Senior Manager, Patent Administration

are authorized to execute and to revoke on behalf of Merck & Co., Inc. and its affiliates (including subsidiaries) the following documents relating to patent matters:

Powers of attorney as fully in law as may be necessary and proper in connection with the acquisition, registration, maintenance and enforcement of patents and applications for patents, including powers of attorney relating to the prosecution or defense of patent rights before courts of law or other governmental tribunals, agencies or departments; affidavits and declarations; and any other documents which are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents.

0805S



JOINT Merck Case 20634Y

U.S. Serial No. 09/799,937

Filing Date March 6, 2001

ASSIGNMENT AND AGREEMENT

For value received, we, Robert K. Evans and David B. Volkin

of 221 Cowpath Road, Souderton, PA 18964; and
160 Hart Avenue, Doylestown, PA 18901; respectively.

hereby sell, assign and transfer to MERCK & CO., Inc., a corporation of the State of New Jersey, having an office at Lincoln Avenue, City of Rahway, State of New Jersey, and its successors, assigns and legal representatives, the entire right, title and interest, for all countries, in and to certain inventions relating to

ADENOVIRUS FORMULATIONS

described in an application for Letters Patent of the United States, executed by us on even date herewith, and in provisional application(s) Serial No. 09/799,937 filed on 03/06/2001 ; Serial No. 60/187,440 filed on 03/07/2000 ; Serial No. filed on (if applicable), and all the rights and privileges, including any and all benefits under the International Convention for the Protection of Industrial Property under any and all Letters Patents which may be granted therefor, and under any and all extensions, divisionals, reissues and continuations of said Letters Patents.

We request that any and all Patents for said inventions be issued to said assignee, its successor, assigns and legal representatives, or to such nominees as it may designate.

We agree that, when requested, we will, without charge to said assignee but at its expense, sign all papers, take all rightful oaths, and do all acts which may be necessary, desirable or convenient for securing and maintaining Patents for said inventions in any and all countries and for vesting title thereto in said assignee, its successors, assigns and legal representatives or nominees.

We covenant with said assignee, its successors, assigns and legal representatives, that the rights and property herein conveyed are free and clear of any encumbrance, and that we have full right to convey the same as herein expressed.

We hereby authorize our attorney, L. Mark Hand or an attorney with Power of Attorney in this application, of the said MERCK & CO., Inc., to insert Serial No., and Filing Date of said application(s) when known.

Signed at West Point, PA this 30th day of April, 2001.

Robert K. Evans
Robert K. Evans

David B. Volkin
David B. Volkin

JOINT Merck Case 20634Y

U.S. Serial No. 09/799,937

Filing Date March 6, 2001

ASSIGNMENT AND AGREEMENT

Signed at _____ this _____ day of _____, _____.

COMMONWEALTH OF PENNSYLVANIACounty of Montgomery

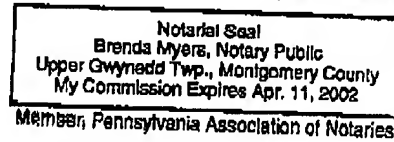
} SS.

Personally appeared before me the above-named Robert K. Evans David B. Volkin

to me known and known to me to be the person(s) who executed the foregoing instrument and acknowledged said instrument to be
 their free act and deed this 30th day of April, 2001.

Brenda Myers

Notary Public



County of _____

} SS.

Personally appeared before me the above-named

to me known and known to me to be the person(s) who executed the foregoing instrument and acknowledged said instrument to be
 their free act and deed this _____ day of _____, _____.

Notary Public